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9 ***SUPERIOR COURT OF THE STATE OF CALIFORNIA***
10 ***FOR THE COUNTY OF ORANGE-CENTRAL JUSTICE CENTER***

11 In re DAVID KYLE,) CASE NO. 30-2011-00513876-SC-SC-CJC
12)
13 Plaintiff,)
14)
15 v.) **SOUTHERN CALIFORNIA EDISON**
16) **COMPANY'S TRIAL BRIEF**
17)
18 SOUTHERN CALIFORNIA EDISON)
19 COMPANY; and DOES 1 to 20, inclusive.)
20)
21 Defendants) Trial Date: January 13, 2012
22) Time: 1:30 p.m.
23) Dept.: C20
24)
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26)
27)
28)

21 **I. INTRODUCTION**

22 This case arises out of Southern California Edison Company's ("SCE") installation of a
23 smart connect meter ("smart meter") at the Kyle home located at 1931 W. Meadowbrook
24 Drive, Santa Ana, California. SCE installed the smart meter in connection with its efforts to
25 comply with the California Public Utility Commission's ("CPUC") Decision 08-09-039, titled
26 Approving Settlement On Southern California Edison Company Advance Metering
27 Infrastructure Deployment. [Exhibit A to SCE's Exhibit Binder.]
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The CPUC issued Decision 08-09-039 on September 22, 2008, in order to implement the smart meter program and to further the CPUC’s “effort to transform California’s investor-owned utility distribution network into an intelligent, integrated network enabled by modern technology and control system technologies.” [CPUC Decision 08-09-039; Ex. A to SCE’s Exhibit Binder.] By issuing this decision, the CPUC expressly exercised its jurisdiction over the smart meter program, which of course is what is squarely at issue in this case. Moreover, the CPUC continues to modify the smart meter program in accordance with its regulatory powers.

Kyle brings this small claims action seeking injunctive relief – specifically, an order mandating that SCE remove the smart meter and reinstall the old meter. As set forth below, pursuant to Public Utilities Code Section 1759, this Court does not have subject matter jurisdiction over the matter and cannot issue an order that would interfere with and frustrate the CPUC’s Decision 08-09-039. *See San Diego Gas & Elec. Co. v. Superior Court* (Covalt) (1996) 13 Cal. 4th 893; *Anchor Lighting v. Southern California Edison Company* (2006) 142 Cal.App.4th 541; *Hartwell Corp. v. Superior Court* (2002) 27 Cal 4th 256.

Furthermore, because Kyle does not seek monetary damages and fails to cite to a specific statute authorizing equitable relief, the injunctive relief he seeks is not authorized under the small claims statute. *See Weil & Brown, CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL* (The Rutter Group 2011), ¶3:46.

Kyle’s remedy is to file a complaint with the CPUC because the CPUC has exclusive jurisdiction over the smart meter program. The CPUC has a straight-forward complaint process which is set forth on its website. Excerpts from the CPUC website are set forth in Exhibit C to Edison’s Exhibit Binder.

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**II. THE COMPLAINT FOR INJUNCTIVE RELIEF MUST BE
DISMISSED BECAUSE THE COURT DOES NOT HAVE SUBJECT
MATTER JURISDICTION TO INTERFERE WITH THE CPUS'S ON-
GOING REGULATION AND SUPERVISION OF THE SMART METER
PROGRAM.**

SCE is an investor-owned utility regulated by the CPUC. The California Constitution imposes a duty on the CPUC to regulate public utilities, providing that the CPUC “shall have and exercise such power and jurisdiction to supervise and regulate utilities . . . as shall be conferred upon it by the Legislature . . .” Cal. Const., art.XII, § 23. Section 701 of the Public Utilities Code provides that the CPUC has the authority to “supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” Pub. Util. Code § 701.

Section 1759 of the Public Utilities Code declares that no court, except the California Supreme Court and court of appeal, has jurisdiction to review or suspend the CPUC’s orders or decisions “**or to enjoin, restrain, or interfere with the commission in the performance of its official duties.**” Pub. Util. Code § 1759 [emphasis added]. Section 2106 of the Public Utilities Code allows an action to be filed in superior court for damages allegedly caused by a public utility’s unlawful act, but *only* if such action is limited to claims where “an award of damages would not hinder or frustrate the commission’s declared supervisory and regulatory policies.” *San Diego Gas & Elec. Co. v. Superior Court* (Covalt) (1996) 13 Cal. 4th 893, 917-18 (quoting *Waters v. Pacific Tel. Co.* (1974) 12 Cal. 3d 1, 4). In other words, “[t]he PUC has exclusive jurisdiction over the regulation and control of utilities, and once it has assumed jurisdiction, it cannot be *hampered*, interfered with, or *second-guessed* by a concurrent superior court action addressing the same issue.” *Id.* at 918, fn.20 (citation omitted). “When the relief sought would have interfered with a broad and continuing supervisory or regulatory program of

1 the [CPUC], the courts have found such a hindrance and barred the action under section 1759.”
2 *Id.* at 919.

3 In *Sarale v. Pacific Gas & Electric* (2010) 189 Cal.App.4th 225, landowners brought an
4 action alleging the utility excessively trimmed commercially productive walnut trees. The
5 Court of Appeal upheld the lower court’s dismissal of the action, holding “trial courts lack
6 jurisdiction to adjudicate [such] claims . . . when the utility has acted under the guidelines or
7 rules set forth by the [CPUC].” *Id.* at 231. The CPUC guideline at issue was General Order 95
8 pertaining to clearances utilities must maintain between trees and utility lines. *Id.* at 237-239.
9 Challenges to the utility’s tree trimming as unreasonable “lie within the exclusive jurisdiction
10 of the [CPUC].” *Id.*

11 In *Hartwell Corp. v. Superior Court* (2002) 27 Cal.4th 256, for example, the plaintiffs
12 filed suit against various water utilities and other providers who allegedly provided unsafe
13 drinking water. Plaintiffs sought, *inter alia*, injunctive relief for current water quality
14 violations. *Id.* at 278. The California Supreme Court held the plaintiffs’ injunctive relief
15 claims were preempted by section 1759. *Id.* at 278-79. The Court reasoned “under the
16 regulatory framework at issue, here, the PUC’s role is to ensure present and future
17 compliance.” *Id.* at 278. Injunctive relief could interfere with CPUC regulatory functions.
18 *Ibid.*

19 Section 1759 divests the superior courts of subject matter jurisdiction over actions that
20 not only would reverse or annul a specific CPUC order, but also those actions that “would
21 simply have the effect of undermining a general supervisory or regulatory policy of the
22 commission, i.e., when it would ‘hinder’ or ‘frustrate’ or ‘interfere with’ or ‘obstruct’ that
23 policy.” *Covalt* at 918. *Covalt* sets forth a three-part test to determine whether section 1759
24 bars a private action against a utility under section 2106: (1) does the CPUC have authority to
25 regulate the matter at issue; (2) has the CPUC exercised that authority; and (3) would the
26 superior court action hinder or interfere with CPUC policies. *Id.* at 923, 925, 935.

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1. CPUC has authority to regulate SCE’s Distribution Network and the Smart Meter Program.

The California Constitution imposes a duty on the CPUC to regulate public utilities, providing that the CPUC “shall have and exercise such power and jurisdiction to supervise and regulate utilities . . . as shall be conferred upon it by the Legislature . . .” Cal. Const., art.XII, § 23. The CPUC has broad authority to “do all things” necessary to supervise and regulate public utilities. *Covalt, supra*, 13 Cal. 4th at 924. The CPUC has the authority “to require every public utility to ‘construct, maintain, and operate’ its ‘plant, system, equipment, [or] apparatus’ in such a manner so as to ‘safeguard the health and safety of its employees . . . customers, and the public . . .” *Covalt* at 924 [quoting Pub. Util. Code, §768]; *see also Anchor Lighting v. Southern California Edison Company* (2006) 142 Cal.App.4th 541,547 [CPUC “is constitutionally empowered to . . . fix rates”]; *Hartwell Corp. v. Superior Court* (2002) 27 Cal 4th 256, 270 [CPUC has authority over utility ratemaking and rate regulation]. The CPUC regulates utilities by, among other things, issuing decisions, orders, and “tariffs.”

2. CPUC has expressly exercised authority over SCE’s Distribution Network and the Smart Meter Program.

The CPUC issued Decision 08-09-039 on September 22, 2008, in order to implement the smart meter program and to further the CPUC’s “effort to transform California’s investor-owned utility distribution network into an intelligent, integrated network enabled by modern technology and control system technologies.” [CPUC Decision 08-09-039; Ex. A to SCE’s Exhibit Binder.] By issuing this decision, the CPUC expressly exercised its jurisdiction over the smart meter program, which of course is what is squarely at issue in this case. Moreover, the CPUC continues to modify the smart meter program in accordance with its regulatory powers.

Moreover, the CPUC requires public utilities to file tariff schedules containing the utility’s rates, charges, classifications and conditions affecting service, and once a tariff schedule is filed with and approved by the CPUC, it becomes binding on the public “with the

1 force and effect of a law.” *Los Angeles Cellular Telephone Co. v. Superior Court* (1998) 65
2 Cal.App.4th 1013, 1017. Tariff 16, pertaining in part to SCE meters, is one such tariff. [Tariff
3 16, Ex. D to SCE’s Exhibit Binder.]

4 **3. Superior Court Action would intrude upon CPUC’s jurisdiction and**
5 **interfere with CPUC’s ongoing regulation and supervision of SCE’s**
6 **Distribution Network and the Smart Meter Program.**
7

8 Here, just as in the *Colvalt*, *Sarale* and *Hartwell* decisions, Superior Court action would
9 be improper. SCE installed the smart meter at the Kyle home pursuant to CPUC Decision 08-
10 09-039. Plaintiff seeks to undo exactly what CPUC Decision 08-09-039 attempts to implement
11 – installation of smart meters. Ordering SCE to remove the smart meter would undermine the
12 purpose of CPUC Decision 08-09-039, and frustrate the CPUC’s regulatory “effort to
13 transform California’s investor-owned utility distribution network into an intelligent, integrated
14 network enabled by modern technology and control system technologies.” [CPUC Decision
15 08-09-039.]
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17 The CPUC has expressly exercised jurisdiction over smart meters and meters in
18 general. Under Section 1759 of the Public Utilities Code and *Colvalt*, *Sarale* and *Hartwell*, the
19 Superior Court cannot interfere or frustrate that jurisdiction.
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21 **III. PLAINTIFF CANNOT SEEK INJUNCTIVE RELIEF AS PLED**
22 **PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 116.220.**

23 Plaintiff seeks injunctive relief – i.e., removal of the smart meter and reinstallation of
24 the old meter. Such relief, however, is not authorized by Civil Code Section 116.220 because
25 plaintiff does not seek money damages and failed to identify a statute expressly authorizing
26 such equitable relief.
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1 As set forth in the Rutter Guide, a small claims court can grant equitable relief in two
2 circumstances: (1) “in the form of rescission, restitution, reformation or specific performance,
3 *in connection* with any money damage claim otherwise within its jurisdiction. [CCP
4 §116.220(b)]” and (2) when a *statute expressly authorizes* a small claims court to grant
5 equitable relief. [CCP §116.220(a)(5).]” *Weil & Brown, CAL. PRAC. GUIDE: CIV. PRO.*
6 *BEFORE TRIAL* (The Rutter Group 2011), ¶3:46 [emphasis added].
7

8 Here, plaintiff does not seek money damages, so the equitable relief sought is not
9 sought “in connection with” a money damage claim as required by the statute. Moreover,
10 plaintiff does not set forth “a statute expressly authorizing” equitable relief in this case.
11 Accordingly, injunctive relief is not authorized in this action under Civil Code Section
12 116.220.
13

14 **IV. CONCLUSION.**

15 For the foregoing reasons, SCE respectfully requests that judgment be entered in its
16 favor and against plaintiff.

17 Dated: January 12, 2012

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20
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